

## Message Text

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ORIGIN L-03

INFO OCT-01 EA-11 ADP-00 PM-09 DODE-00 JUSE-00 SCA-01

CIAE-00 INR-09 NSAE-00 RSC-01 INRE-00 SSO-00 NSCE-00

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JUSTICE: JCMURPHY SUB

OSD/ ISA/ FMRA: LT COL TERRY INFO

USAF( JA): LT COL N THORPE INFO

OSD/ DGS/ IA: HALMOND SUB

OSD/ ISA/ EAPR: CAPT SHAID INFO

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

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E. O. 11652, N/ A

TAGS: PFOR, RP

SUBJECT: EXTRADITION TREATY NEGOTIATIONS

REFS: ( A) MANILA' S 3022; ( B) MANILA' S 3060

1. WHILE DEPARTMENT GRATIFIED AT DEGREE OF GOP PREPARATION FOR NEGOTIATIONS, GOP IS SEEKING PROVISIONS ENTIRELY AT VARIANCE ON EVERY SIGNIFICANT POINT WITH WHAT USG ABLE TO AGREE TO, AT LEAST IN CURRENT CIRCUMSTANCES.

2. RE PARA 2 OF REFTTEL A, BELIEVE THIS MAY BE MORE FUNDAMENTAL PROBLEM THAN RECOGNIZED BY GOP TO DATE. WORKABLE PROCEDURES AND REASONABLE EVIDENTIARY REQUIREMENTS ARE BASIC TO SATISFACTORY HANDLING OF USG REQUESTS AND TO EFFECTIVE REPRESENTATION OF USG BY PHILIPPINE LIMITED OFFICIAL USE

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JUSTICE DEPARTMENT. IN THIS CONNECTION EMBASSY REQUESTED CABLE TO DEPARTMENT REFERENCES TO COMMUNICATIONS OF

US EXTRADITION REQUEST TO PHILIPPINES FOR PERSON SOUGHT IN NEW YORK STATE FOR MURDER DURING TENURE OF LARRY HOOVER AS LEGAL ADVISER WHICH REQUEST ULTIMATELY NOT ACTED ON IN ABSENCE US/ PHILIPPINE TREATY.

3. RE PARA 3 REFTEL A, LIST OF EXTRADITABLE OFFENSES IS SO BASIC TO USG THAT NO BILATERAL EXTRADITION TREATY EVER CONCLUDED BY USG WITHOUT LIST. THUS, THERE EXISTS NEED TO EXPLAIN OUR REQUIREMENT FOR LIST AND GOP UNDERSTANDING THAT WE ARE UNABLE TO CONSIDER ALTERNATIVES.

4. RE PARA 4 REFTEL A, WHILE GOP PREFERENCE UNDERSTANDABLE, PARTICULARLY IN LIGHT OF THEIR HOPES REPORTED PARA 7 REFTEL A, USG CONSIDERS PHILIPPINE JUDICIARY AND LEGAL PROCESSES LESS CONFIDENCE-INSPIRING AND COMPLETELY LACKING IN EXTRADITION EXPERIENCE AS CONTRASTED WITH SWEDISH, ISRAELI AND BRAZILIAN COUNTERPARTS. WE FRANK TO NOTE THAT OUR VIEW AFFECTED BY KNOWN INSTANCES OF MISUSE OF PHILIPPINE CRIMINAL PROCEDURES TO HARASS U. S. MILITARY PERSONNEL-- MISUSES FREQUENTLY BASED ON CHARGES FOR OFFENSES NORMALLY LISTED AS EXTRADITABLE.

5. ACCORDING TO MANILA'S 2762, MARTIAL LAW CONFERS EXCLUSIVE JURISDICTION TO MILITARY TRIBUNALS OVER MANY NORMALLY LISTED OFFENSES, AND GIVES CONCURRENT JURISDICTION TO SUCH TRIBUNALS OVER MANY OTHER SUCH OFFENSES. IT EXTREMELY DOUBTFUL THAT U. S. EXTRADITION MAGISTRATE OR COURT JUDGE WOULD EVER APPROVE GOP EXTRADITION REQUEST WHEN CIVILIAN PERSON SOUGHT, WHETHER U. S. NATIONAL OR FOREIGN NATIONAL, IS SUBJECT TO POSSIBILITY OF TRIAL BY MILITARY TRIBUNALS, OR WHERE CIVILIAN COURT PROCEDURES COULD BE EFFECTED DIRECTLY OR INDIRECTLY BY MARTIAL LAW CONDITIONS. U. S. SENATE CONCERNS WILL, OF COURSE, FOCUS PARTICULARLY ON POSSIBILITY OF U. S. EXTRADITION OF U. S. NATIONAL FOR TRIAL BY GOP MILITARY TRIBUNAL OR MARTIAL LAW PROCEDURES.

6. HOWEVER, IN VIEW PAST EXPERIENCE WITH PHILIPPINE COURTS, EVEN ABSENCE OF MARTIAL LAW WOULD STILL LEAVE LIMITED OFFICIAL USE

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PROBLEM RE EXTRADITION OF U. S. NATIONALS, AND IT EXTREMELY DOUBTFUL IN OUR VIEW THAT GOP EXECUTIVE BRANCH IS IN POSITION RELIABLY TO SCREEN CASES IN ORDER EFFECTIVELY TO AVOID MAKING EXTRADITION REQUESTS BASED ON SPURIOUS CHARGES. THUS, PROVISION AS IN SPANISH TREATY REPRESENTS MAXIMUM TO WHICH U. S. CAN AGREE, AND EXISTENCE OF NUMEROUS OLDER AND NEWER U. S. TREATIES WITH SIMILAR LANGUAGE SHOULD HELP WITH

OPTICAL ASPECTS THIS PROBLEM.

7. RE PARA 5 REFTEL A, DEPARTMENT UNABLE COME UP WITH EXPLANATION OF GOP INTEREST IN EXTRADITING PHILIPPINE NATIONALS FROM U. S. FOR PURELY MILITARY OFFENSES. WHILE EXPLANATION WOULD BE INTERESTING, WE SEE NO LIKELIHOOD AT ALL THAT WE CAN AGREE TO SUCH A BASIC DEPARTURE FROM THE CUSTOMARY POSITION THROUGHOUT THE WORLD PRECLUDING EXTRADITION WITH RESPECT TO PURELY MILITARY OFFENSES, DESPITE FACT THAT U. S. WOULD BE MOST LIKELY BENEFICIARY OF PROVISION AS SUGGESTED.

8. RE PARA 7 REFTEL A, USG UNABLE TO AGREE TO EXTRADITE U. S. SERVICEMEN FOR OFFENSES COMMITTED IN PHILIPPINES IF U. S. AUTHORITIES HAVE ASSERTED JURISDICTION OVER THE OFFENSE, REGARDLESS WHETHER OUTCOME OF SUCH EXERCISE IS ACQUITTAL, DISCONTINUANCE OF PROCEEDINGS, OR CONVICTION.

9. RE PARA 8 REFTEL A, WE NOT PREPARED TO COMPROMISE ALTHOUGH MATTER WOULD BE DISCUSSED. GOP SHOULD BE AWARE OF FACT THIS WAS THE MAJOR PROBLEM DURING 1947-48 NEGOTIATIONS AND ACCOUNTS FOR THEIR FAILURE. U. S./ SPANISH TREATY AND 1972 U. S./ ARGENTINE TREATY ( MOST RECENT TO COME INTO FORCE) ARE NOT RETROACTIVE DESPITE FACT WE HAD LONGSTANDING EXTRADITION RELATIONS WITH THESE COUNTRIES. DISTINCTION TO OUR SITUATION WITH GOP IS THAT U. S. PROPOSED RETROACTIVITY WHILE SPAIN AND ARGENTINA WERE UNABLE TO ACCEPT IT.

10. RE REFTEL B, WE NOTE THAT LANGUAGE QUITE SIMILAR IN MANY RESPECTS TO U. S./ SPANISH TREATY. AT FIRST GLANCE, IN ADDITION TO ABOVE PROBLEMS, WE SEE FOLLOWING:  
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ARTICLE I CONTAINS NO PROVISION CONCERNING OFFENSES COMMITTED OUTSIDE TERRITORY OF REQUESTING PARTY AND ARTICLE IV( C) DOES NOT REPRESENT BEST MANNER, IN OUR VIEW, OF HANDLING EXCLUSIONS FROM POLITICAL OFFENSES EXCEPTION RE HAGUE ( HIJACKING) CONVENTION OFFENSES AND DOES NOT DEAL WITH MONTREAL ( SABOTAGE) CONVENTION ( OFFENSES AGAINST AIRCRAFT), THAT CAME INTO FORCE SINCE U. S./ SPANISH TREATY NEGOTIATED. WE ARE CERTAIN THAT WITH CLOSE STUDY, ADDITIONAL DIFFERENCES AND PROBLEMS WILL BE FOUND.

1. IN LIGHT PARAS 1 TO 9 ABOVE, IT APPARENT THAT NEGOTIATIONS WOULD FOCUS PRIMARILY ON ISSUES WHERE U. S. UTTERLY OR ALMOST UTTERLY UNABLE TO ACCEDE TO GOP

WISHES, AND ON WHICH COMPROMISE SOLUTION DOES NOT PRESENTLY APPEAR LIKELY. IN VIEW THIS FACT, DEPARTMENT IS IN SOME DOUBT WHETHER NEGOTIATIONS ARE ADVISABLE AT ALL, AND, IF SO IN EMBASSY VIEW, WHETHER IT NOT TACTICALLY BEST TO SCHEDULE NEGOTIATIONS AT MANILA FOR ONE WEEK ONLY WITH ONLY TENTATIVE POSSIBILITY OF SECOND WEEK DEPENDING ON DEVELOPMENTS DURING FIRST WEEK. WE BELIEVE IN ANY EVENT THAT U. S. INABILITY TO AGREE ON POINTS DISCUSSED IN PARAS 1 TO 9 WILL REQUIRE, FOR CONSULTATION AND TACTICAL REASONS VIS- A- VIS GOP, SECOND SESSION IN WASHINGTON AFTER SOME DELAY, DURATION OF WHICH WOULD REMAIN FLEXIBLE AND WITHIN OUR CONTROL. REQUEST EMBASSY ASSESSMENT ON BASIS FURTHER DISCUSSIONS MARCH 20, AND IF NEGOTIATIONS DEEMED ADVISABLE, AND AFTER SUGGESTION TO GOP THAT ONE WEEK COULD SUFFICE FOR INITIAL SESSION, REQUEST EMBASSY SUGGESTION AS TO ONE- PLUS- ONE WEEK PERIOD ENTIRELY IN APRIL DURING WHICH NEGOTIATIONS SHOULD TAKE PLACE, PREFERABLY NOT COMMENCING BEFORE APRIL 9. ROGERS

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